

ESTTA Tracking number: **ESTTA751943**

Filing date: **06/13/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	John Middleton Co.		
Entity	Limited Liability Company	Citizenship	Pennsylvania
Address	475 North Lewis Road Limerick, PA 19468 UNITED STATES		

Correspondence information	Joel D. Leviton Attorney for Opposer Stinson Leonard Street LLP 150 South Fifth Street Suite 2300 Minneapolis, MN 55402 UNITED STATES Trademark.MPL@stinson.com,joel.leviton@stinson.com Phone:(612) 335-1562
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Applicant Information

Application No	86771515	Publication date	05/17/2016
Opposition Filing Date	06/13/2016	Opposition Period Ends	06/16/2016
Applicant	Marina Vape, LLC 4943 McConnell Ave, Suite N Los Angeles, CA 90066 UNITED STATES		

Goods/Services Affected by Opposition

Class 034. First Use: 2014/12/29 First Use In Commerce: 2014/12/29
All goods and services in the class are opposed, namely: Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form, other than essential oils, used to refill electronic cigarette cartridges; Cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	4775782	Application Date	09/19/2014
Registration Date	07/21/2015	Foreign Priority Date	NONE
Word Mark	JAZZ		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2012/08/15 First Use In Commerce: 2012/08/15 tobacco products, namely, cigars

U.S. Registration No.	4298617	Application Date	11/30/2010
Registration Date	03/05/2013	Foreign Priority Date	NONE
Word Mark	BLACK & MILD JAZZ		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 034. First use: First Use: 2012/08/15 First Use In Commerce: 2012/08/15 Tobacco Products, Namely, Cigars		

Attachments	86399760#TMSN.png(bytes) 85187140#TMSN.png(bytes) JAZZY BOBA - Notice of Opposition - PDF.PDF(96429 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/laila s. wolfgang/
Name	Laila S. Wolfgang
Date	06/13/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

JOHN MIDDLETON CO.,

Opposer,

v.

MARINA VAPE, LLC,

Applicant.

Opposition No.: _____

Mark: JAZZY BOBA

Serial No. 86/771,515

Published: May 17, 2016

NOTICE OF OPPOSITION

John Middleton Co. (“Middleton”), a Pennsylvania limited liability company with a place of business at 475 North Lewis Road, Limerick, Pennsylvania 19468, believes it will be damaged by registration of the mark shown in Application Serial No. 86/771,515 (the “Application”) and hereby opposes the same pursuant to the provisions of 15 U.S.C. § 1063.

The grounds for opposition are as follows:

1. Middleton is a leading manufacturer of cigars and smoking tobacco for adult tobacco consumers.
2. In 2012, Middleton adopted and began using the trademark JAZZ in connection with cigars and has continuously used the JAZZ trademark on and in connection with cigars since that time.
3. In addition to its longstanding common law trademark rights in its JAZZ mark, Middleton owns Registration No. 4,775,782 for the mark JAZZ for “tobacco products, namely,

cigars” in International Class 34, which issued on July 21, 2015, with a priority date of September 19, 2014.

4. Middleton also owns Registration No. 4,298,617 for the mark BLACK & MILD JAZZ for “tobacco products, namely, cigars” in International Class 34, which issued on March 5, 2013, with a priority date of November 30, 2010.

5. Notwithstanding Middleton’s prior rights in its JAZZ and BLACK & MILD JAZZ marks, on September 29, 2015 (the “Application Filing Date”), applicant Marina Vape, LLC (“Applicant”) filed an application seeking to register the mark JAZZY BOBA (“Applicant’s Mark”) in connection with “Chemical flavorings in liquid form used to refill electronic cigarette cartridges; Electronic cigarette liquid (e-liquid) comprised of flavorings in liquid form, other than essential oils, used to refill electronic cigarette cartridges; Cartridges sold filled with chemical flavorings in liquid form for electronic cigarettes,” (“Applicant’s Goods”) in International Class 34, which was designated 86/771,515.

6. The Application was published for opposition on May 17, 2016. Therefore, this Notice of Opposition is timely filed.

7. Middleton began using its JAZZ and BLACK & MILD JAZZ marks in connection with tobacco products at least as early as 2012, long before Applicant’s claimed date of first use and date of first use in commerce of December 29, 2014, and the Application Filing Date.

8. Middleton’s common law and statutory priority dates precede the filing date of the Application, Applicant’s claimed date of first use, and, upon information and belief, any other priority date upon which Applicant may rely. Therefore, Middleton has priority over Applicant.

9. Prior to filing the Application, Applicant had constructive knowledge of Middleton’s JAZZ and BLACK & MILD JAZZ marks given Middleton’s federal registrations set forth above.

10. Applicant’s Goods are tobacco products.

11. Applicant's Goods and the goods offered under Middleton's JAZZ and BLACK & MILD JAZZ marks are both tobacco products in International Class 34.

12. Upon information and belief, Applicant's Goods are intended for use by adult tobacco consumers.

13. Upon information and belief, Applicant's Goods and the tobacco products offered under the JAZZ and BLACK & MILD JAZZ marks are sold to the same class of consumers, namely, adult tobacco consumers.

14. Applicant's mark JAZZY BOBA is nearly identical to Middleton's distinctive JAZZ mark and confusingly similar to Middleton's BLACK & MILD JAZZ mark. Applicant's mark is comprised of the term JAZZY and the term BOBA. The term BOBA is merely descriptive of Applicant's Goods and has been disclaimed by Applicant. The distinctive component of Applicant's Mark is the term JAZZY, which fully incorporates Middleton's JAZZ mark and is nearly identical to Middleton's JAZZ mark in sight, sound, and connotation.

15. Middleton's JAZZ mark is highly distinctive in connection with tobacco products. Middleton's registrations for JAZZ and BLACK & MILD JAZZ are the only live U.S. registrations in International Class 34 for marks that include "JAZZ."

16. Due to the highly distinctive nature of JAZZ in connection with tobacco products, and the similarity of the products at issue and the intended consumers, Applicant's Mark so resembles Middleton's previously adopted, used and registered JAZZ and BLACK & MILD JAZZ marks that Applicant's Mark, when used in connection with Applicant's Goods, is likely to cause confusion, to cause mistake, or to deceive. Purchasers and prospective purchasers are likely to mistakenly believe that the products Applicant offers under the JAZZY BOBA mark are produced, sponsored, endorsed, or approved by Middleton, or are in some way affiliated, connected, or

associated with Middleton or its JAZZ brand, all to the detriment of Middleton. Registration of Applicant's Mark, therefore, should be refused under 15 U.S.C. §§ 1052(d) and 1063.

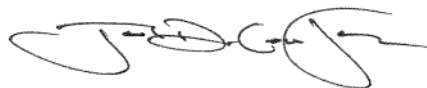
17. Registration of Applicant's Mark would be a further source of damage to Middleton, as it would confer upon Applicant various statutory presumptions to which it is not entitled in view of Middleton's prior use and registration of the JAZZ and BLACK & MILD JAZZ marks.

WHEREFORE, pursuant to Section 13 of the Lanham Act, 15 U.S.C. § 1063, Middleton respectfully requests that its opposition be sustained and that registration of the mark shown in Application Serial No. 86/771,515 be refused.

Please charge the Notice of Opposition fee to the Deposit Account of Stinson Leonard Street LLP Account No. 19-4409.

Respectfully submitted,

Date: June 13, 2016



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the NOTICE OF OPPOSITION has been served this 13th day of June, 2016, by First Class U.S. Mail, postage prepaid, upon Applicant and Applicant's attorney of record at the following addresses:

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